

**PROCEEDINGS OF THE AUSTRALIAN RANGELAND SOCIETY BIENNIAL CONFERENCE**  
**Official publication of The Australian Rangeland Society**

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The reference for this article should be in this general form;

Author family name, initials (year). Title. *In*: Proceedings of the nth Australian Rangeland Society Biennial Conference. Pages. (Australian Rangeland Society: Australia).

For example:

Anderson, L., van Klinken, R. D., and Shepherd, D. (2008). Aerially surveying Mesquite (*Prosopis* spp.) in the Pilbara. *In*: 'A Climate of Change in the Rangelands. Proceedings of the 15<sup>th</sup> Australian Rangeland Society Biennial Conference'. (Ed. D. Orr) 4 pages. (Australian Rangeland Society: Australia).

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# MULTIPLE AND JOINT USES ON PASTORAL LEASES: TENURE REFORM TO ACCOMMODATE THE MULTIFUNCTIONAL TRANSITION

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## ABSTRACT

Already, major reforms have been implemented to land tenures and land ownership in Australia's rangelands, markedly restructuring the property, use and access rights awarded to major interest groups. These reforms are an implicit recognition of the transition towards multifunctionality, in which a complex array of consumption and protection values have emerged, displacing the former unchallenged dominance of production values. Further needed reforms are proving difficult to achieve, for reasons outlined in this paper. These reforms need to be pursued, not only to accommodate the increasingly important role of non-pastoral values but also to mitigate the structural problems which constrain rangeland communities from capturing the benefits of the multifunctional transition.

## INTRODUCTION: THE TRANSITION TO MULTIFUNCTIONALITY

Multifunctionality refers to the fact that an economic activity may have multiple outputs and, by virtue of this, may contribute to several societal objectives at once. Multifunctionality is thus an activity-oriented concept that refers to specific properties of the production process and its multiple outputs (OECD 2001, 6).

The Ministerial communique (OECD 1998) recognises that, beyond its primary function of supplying food and fibre, agricultural activity can also shape the landscape, provide environmental benefits such as land conservation, the sustainable management of renewable natural resources and the preservation of biodiversity, and contribute to the socio-economic viability of rural areas (OECD 2001, 5).

Multifunctionality has become a buzz-word, narrowly defined to fit the policy imperatives of protectionist countries, notably the European Union and Japan, primarily intended to open up new modes of indirect agricultural support. Under WTO rules these 'non-commodity' outputs, grouped in the Green Box, can receive state-funded support, thus circumventing the agreed upper limits on direct production-specific and trade-distorting support, grouped in the Amber Box, with these now being approached in these countries.

Quite apart from its purpose in further corrupting trade in food and fibre, there are many additional problems with this narrow, production-oriented interpretation of multifunctionality. For an informed critique, see Potter and Burney (2002). For an Australian response, see Wynen (2002). To these provisos, I wish to add another, namely the pre-emptive hijacking of a useful term for a narrow policy goal, while also confining its application to 'the production process and its multiple outputs' (OECD 2001, 6). Consistent with this limitation, the report refers to forestry but not to forests, nor is there any recognition of multiple values (or 'outputs') from rivers, wildlife or other natural 'production' systems.

Equally important, this narrow designation fails to capture the critical change which has occurred in recent decades in western, market-oriented modes of rural land use, with the former dominance of *production* values being increasingly contested by the emergence of *consumption* and *protection* values. In interpreting this change in Australia's rangelands, I have previously followed the practice of UK rural researchers in describing this as a 'post-productivist transition' (Holmes 1997, 2002a). More recently I have proposed an alternative descriptor, namely the 'multifunctional rural transition', involving a more complex, contested, variable mix of production, consumption and protection goals (Holmes submitted). The growing importance of consumption values in shaping rural futures in

favoured locales has recently attracted attention. In his report on structural change, commissioned by the National Land and Water Resources Audit, Barr (2002, 107) comments:

*Currently, demand for landscape amenity is a major influence upon the pattern of structural change in Australian agriculture. The influence is manifest in the high price of land in the more amenable and accessible parts of the rural landscape. These higher land prices restrict the capacity of agriculture to adjust to maintain competitiveness and inexorably drive the path of adjustment to a non-commercial agricultural future.*

Barr provides detailed evidence on the transition towards part-time or hobby or retirement farming in these locations, in response to the inadequacy of farm incomes and better access to non-farm income sources.

The rangelands of western U.S.A. are experiencing a parallel recent emergence of consumption values, now displacing commercial ranching from more favoured areas. This trend is accelerated by major population movements into rangeland states, attracted to high-amenity locations and with real-estate pressures being magnified by the limited availability of freehold land amid the extensive federal lands, held by the Bureau of Land Management and the National Forest Service. These pressures are contributing to the demise of full-time, commercial ranching on some of the most productive grazing lands (Knight *et al.* 2002).

## **THE TRANSITION IN AUSTRALIA'S RANGELANDS: STRUCTURAL PROBLEMS**

As documented in my earlier overviews, Australia's rangelands are also experiencing a multifunctional transition, involving a radical shift from the former dominance of production values towards a regionally variable, contested mix of production, consumption and protection values. However, there are major structural differences when compared with either Australia's coastal areas or America's rangelands. Most strikingly, while these new values are powerfully reshaping future directions in our rangelands, they are providing meagre income streams or job opportunities, save in a few locations. In describing this as 'more value but less cash', I have discussed two significant structural problems. The first of these is the *shift towards non-market values*, including the restoration of indigenous customary resource use, preservation of biodiversity and of valued, semi-pristine landscapes, more emphasis on sustainability and on the greenhouse balance-sheet. The second is described as the *geographical transfer of value*, by which there is a 'functional and geographical disconnection of income streams from resource locale'. The economic benefits from emerging market-oriented, income-generating activities are captured by the cities, with few benefits to outback landholders or remote communities. This is the case most notably for fly-in-fly-out mining and mobile, self-sufficient safari-bus, 4WD, campervan and caravan tourism (Holmes 1997, 4).

## **NEEDED REFORM IN LEASE TENURES**

At the 1996 Port Augusta rangeland conference, I sought to identify appropriate regional strategies to alleviate these structural problems (Holmes 1997, 20-24). At the 2002 Kalgoorlie conference, I addressed an entirely different decision context, namely reform of land tenure and land allocation to capture the benefits and minimise negative outcomes from the emergence of multiple uses and users of rangeland resources (Holmes 2002b, 63-67). My main proposals were: reactivation of the state's power to allocate and regulate non-pastoral resource-use, not only for lessees but also for third parties; expansion of public access routes and destinations; facilitating diversification of income streams for lessees; formulating protocols for collaborative arrangements between lessees and third-parties; enhancing the opportunity spectrum for footloose visitors, while minimising negative impacts; identifying trade-offs with lessees to selectively enhance their resource rights in return for enhanced protection of critical locales and ecosystems; and re-allocation of strategic land parcels to public ownership for multiple use, as with the American federal lands.

## **THE MOMENTUM TOWARDS REFORM**

Some of these proposals may seem unrealistic. However, they should be viewed as merely a continuation of the recent, ongoing process of basic structural reform in land tenures, land allocation and property rights in Australia's rangelands. These reforms are being driven by the need to recognise the emergence of consumption and protection values alongside formerly dominant production values, consistent with the transition to institutionalised multifunctionality. Major elements in structural reform, already undertaken, are summarised in Table 1.

Of the proposals presented at Kalgoorlie, listed above, some initiatives have been undertaken. In all jurisdictions, governments have actively exercised their ownership of non-pastoral rights to facilitate diversification by lessees, but have been slow to award any of these non-pastoral rights to third parties. South Australia, Western Australia and Northern Territory have legislated to enable designation of public access routes on pastoral leases, but only in South Australia has any real progress been made. Only tentative moves have been undertaken in pursuit of trade-offs with lessees, enhancing their production-related property rights over select areas in return for protection controls over other portions of their leases. N.S.W. has taken the lead with a significant programme in its southern mallee zone, tied to cropping permits.

Prompted by the expiry of all pastoral leases in 2015, Western Australia has also been pursuing a number of policy initiatives in recognition of the multifunctional transition, with a strong emphasis on protection values. By far the most important of these is the exercise of the state's powers to terminate leases or to make exclusions from leases at time of renewal. The government has given notice of termination to 19 small leases in the South West Land Division and, of more significance, to four leases in the pastoral zone. Three of these are required for conservation purposes and the fourth for a number of purposes, including Broome townsite extension, conservation and Aboriginal interests. In addition, of the 512 pastoral leases, 97 have received notifications of exclusions of land required for conservation purposes. While occurring across all regions, the most extensive exclusions are in the Gascoyne-Murchison Region, where the regional strategy involves 10 to 15 percent of land to be held in conservation reserves. Lessees may have an ongoing role as managers or part-time rangers on these lands.

Of the other areas offering scope for structural reform, listed above, at this stage little further action has been formally proposed by government in W.A. However, following the first Gascoyne Muster, held in May 2002, five working groups were established 'to consider and make recommendations on important industry issues'. These groups were concerned with: sustainability; access to pastoral land; Aboriginal access and living areas; alternative models of land tenure; and pastoral industry economic monitoring requirements. The reports of working groups were discussed at the second Gascoyne Muster, held in October 2004. Also the reports were open to public comment until February 2004, after which the government has been considering further possible legislative changes, yet to be announced. At the first Gascoyne Muster, a wide array of issues was canvassed by all those in attendance, working in teams. On the theme of multiple use, diversification, public access and tourism, the issues receiving the most frequent mentions were: public liability; codes of conduct and public awareness; the rights of the lessee; damage to pastoral activity; and royalties and fees to lessees.

## **FUTURE DIRECTIONS**

Not only in W.A. but in all jurisdictions, multifunctionality clearly remains on the policy agenda, with further moves to structural reform being inevitable. However, progress is likely to be gradual and reactive, save only when prompted by the exigencies of the legislative process, as with the termination of all leases in W.A. in 2015. This slow pace can be explained by the complexities in accommodating and reconciling diverse interests, particularly when seen to lead to potential disadvantage to the interests of the lessees.

Table 1. Changing directions in land ownership and property rights in Australia's rangelands.

| Ownership, rights and duties              | During productivist era  | During multifunctional transition   |
|---|--|---|
| <i>Pastoral leases</i>                    |  |   |
| Rights of lessees                         | Progressively enhanced rights; greater security of tenure towards perpetual lease or freehold titles; <u>but</u> with continuing restrictions on non-pastoral activities | Limitations on rights towards ensuring sustainable use or recognising third-party interests; receding prospects for freeholding; <u>but</u> with greater freedom to engage in non-pastoral activities |
| Rents                                     | Generally tied to livestock carrying capacity; progressive decline in rents, thus transferring asset value of land to lessee   | Tied to land value, intended to ensure no further value-transfer to lessee and to recognise influence of non-pastoral uses on land value  |
| Duties of lessees                         | Production-oriented: minimum stocking rates; development conditions, involving fencing, water-points and tree-clearing   | Conservation-oriented: limitations on stocking rates; monitoring of range condition; controls on vegetation clearing and plant introductions  |
| Rights of third-parties                   | Not recognised: lessee had exclusive possession save for limited public access and indigenous use in some jurisdictions  | Exclusive possession denied in 1996 Wik judgment, recognising potential co-existing native title; further selective recognition of third-party access rights  |
| Areal extent                              | Stable, embracing 42 percent of Australia's land area  | Steadily declining, notably on marginal lands   |
| <i>Aboriginal lands</i>                   |  |   |
| Property rights on Aboriginal lands       | None: land held mainly in government reserves  | Substantial rights, including right to negotiate over mining activities; most land held under non-transferable freehold title   |
| Common-law native title                   | Not recognised   | Recognised in 1992 Mabo judgment and found to have survived in limited contexts   |
| Indigenous rights on pastoral leases      | Limited statutory access rights in only three jurisdictions (S.A., W.A., N.T.)   | Some expansion of statutory rights; co-existing native title rights where traditional physical connection maintained (1996 Wik judgment)  |
| Indigenous rights on conservation lands   | Not recognised   | Increasingly recognised, either as co-existing native title or as Aboriginal freehold with long-term lease-back to state, involving joint management  |
| Areal extent of Aboriginal land ownership | Negligible   | 15 percent of Australia's land area, and expanding  |

Source: adapted from Holmes (2002a).

Another impediment to reform is the diffuse, fragmented, ill-organised representation of non-pastoral interests, incapable of exercising political influence commensurate with their prospective economic, social or environmental value within the rangelands. Also, of course, the lack of an appropriate institutional structure has a negative effect, not only in failing to accommodate these interests, but also in failing to mitigate the structural problems which militate against local capture of the social and economic benefits which can accompany the transition to multifunctionality.

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